

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2507 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMJIBHAI NATHALAL BHARDA

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MS PC KAVINA for YN OZA for Petitioner

MR NN PANDYA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner by this Sp. Civil Application challenges the orders dated 23rd August, 1984, 22nd July, 1985 and 2nd August, 1985. These orders have been filed by the petitioner at annexure 'C', 'D' and 'E' to this Special Civil Application. Under the order annexure 'C' the petitioner was communicated with adverse remarks for the year 1983-84. Under the order annexure 'D' the

petitioner was communicated with adverse remarks for the year 1984-85 which has been substituted by another remark under annexure 'E'. The petitioner has prayed for in this Sp. Civil Application for expunction of these adverse remarks. I have taken a view earlier that the adverse remarks as such cannot be challenged before this Court by filing of this Sp. Civil Application as these adverse remarks does not effect any of the service conditions of the petitioner as well as otherwise it does not put any other loss in the services. These remarks may cause some prejudice to the petitioner and may put to him loss also but unless these remarks were taken by the respondent to adversely affect the service condition of the petitioner or causing any loss, no cause of action accrues to petitioner to file this Sp. Civil Application. The remarks are not immutable nor it can be said that the petitioner could not challenge them. The only question is that at what stage or at what point of time, the petitioner can challenge these remarks. I have already held that the cause of action to challenge these remarks before this Court or another appropriate forum will accrue to the petitioner only when on the date on which any order causing any prejudice to any of his service conditions or putting him to any loss in the service is passed. At that stage or at that point of time a right may accrue to the petitioner to make a grievance and he can challenge these remarks while challenging the order passed adversely affecting to him relying on these remarks. The learned counsel for the petitioner fairly conceded that the petitioner has not instructed him that any order causing any prejudice to the petitioner has been made relying on the adverse remarks. At this stage, this Sp. Civil Application is premature, and is disposed of with the direction that in case, at any point of time in future any order is made by the respondent causing any prejudice to any of the service condition of the petitioner or causing any loss to him in the service, he may have an opportunity to challenge these adverse remarks while challenging the prejudicial order passed or made by the respondent relying on these adverse remarks. Rule stands discharged subject to the the aforesaid direction. No order as to costs.
